



EFW

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Anton HALE

Group Art Unit: 2859

Application No.: 10/554,459

Examiner: T. COURSON

Filed: November 18, 2005

Docket No.: 125686

For: DEVICE FOR ADJUSTING THE ANGLE OF A SIGHTING UNIT TO A TARGET

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the May 11, 2007 Election of Species Requirement, Applicant provisionally elects Species I, Figures 4a-4c, with traverse. At least claims 1-7 and 10 read on the elected species. At least claims 1-5 and 10 are generic to all species.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction/election of species practice. *See* MPEP §1893.03(d).

Applicant respectfully submits that there must be unity of invention with respect to claims 1-10, by virtue of the fact that claims 2-10 variously depend from claim 1. As stated in Chapter 10.06 of the ISPE (*International Search and Preliminary Examination Guidelines*):

Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. By "dependent" claim is meant a claim which contains all the features of one or more other claims and contains a

reference, preferably at the beginning, to the other claim or claims and then states the additional features claimed (Rule 6.4).

Therefore, each dependent claim shares at least each element or technical feature of independent claim 1. ISPE 10.07 further provides:

If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention (emphasis added).

Thus, for the present application, a lack of unity of invention may only be determined after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known. *See* ISPE 10.07 and 10.08.

The Office Action does not establish that each and every element of independent claim 1 is known in the prior art. Therefore, Applicant respectfully submits that lack of unity of invention has not been established, and thus a species requirement at this time is improper.

It is also respectfully submitted that the subject matter of all species is sufficiently related that a thorough search for the subject matter of any one species would encompass a search for the subject matter of the remaining species. For example, as discussed above, claims 2-10 depend from independent claim 1. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden.

Thus, withdrawal of the Election of Species Requirement is respectfully requested.

Respectfully submitted,



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Date: June 11, 2007

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